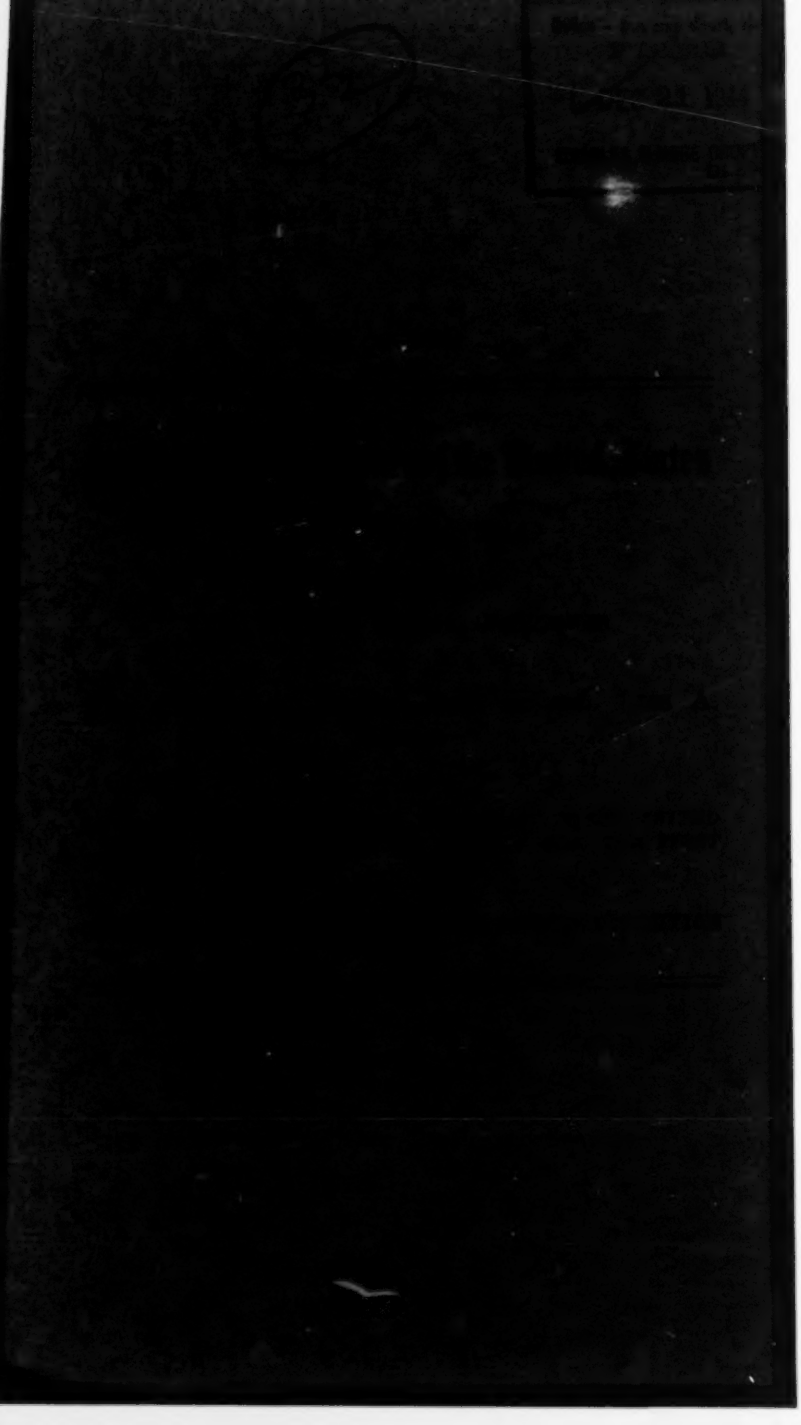


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In the Supreme Court of the United States

OCTOBER TERM, 1944

No. 299

LINO PADRON RIVERA, PETITIONER

v.

THE PEOPLE OF PUERTO RICO EX REL. LUIS A. CASTRO

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE PEOPLE OF PUERTO RICO IN OPPOSITION

OPINIONS BELOW

The opinion of the District Court of San Juan, Puerto Rico (R. 8–45) is not reported. The opinion of the Supreme Court of Puerto Rico (R. 47–58) is reported in 60 Puerto Rican Decisions 798 (Spanish Edition); the corresponding English opinion is not yet officially reported. The opinion of the Circuit Court of Appeals (R. 79–83) is reported in 142 F. (2d) 508.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on April 28, 1944 (R. 84). The petition for a writ of certiorari was filed on July 28,

1944. Jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and under Section 43 of the Act of March 2, 1917, as amended (48 U. S. C. § 865).

QUESTION PRESENTED

Whether the office of Secretary of the Capital of Puerto Rico is a "civil office under the Government of Puerto Rico" within the meaning of Section 30 of the Organic Act of Puerto Rico, which prohibits the appointment of Insular legislators to such an office during their term of office.

STATUTE INVOLVED

Section 30 of the Organic Act of Puerto Rico (Act of March 2, 1917, c. 145, § 30, 39 Stat. 959, as amended by the Act of June 1, 1938, c. 308, 52 Stat. 595; 48 U. S. C. § 819) is set forth in the Appendix, *infra*, p. 14.

STATEMENT

On September 11, 1931, respondent Luis A. Castro was appointed Secretary of the Capital of Puerto Rico by its City Manager, and on January 4, 1937, while still holding that office, was given a further appointment to the same post by the new City Manager who had been elected in November 1936 (R. 51). On February 17, 1941, while Castro was still holding office, the City Manager who had been elected in November 1940 ap-

pointed petitioner, Lino Padron Rivera, to the office of Secretary of the Capital (R. 10, 12, 49, 51). Petitioner was then a member of the Senate of Puerto Rico to which he had been elected on November 5, 1940 (R. 9).[1] On April 21, 1941, petitioner took the oath of office as Secretary, and on the next day, Castro, who had continued to exercise the functions of Secretary, surrendered physical possession of the office to petitioner (R. 49). On May 1, 1941, under authorization of the Attorney General of Puerto Rico (R. 4, 57), a *quo warranto* proceeding in the District Court of San Juan, Puerto Rico, was brought against petitioner by the People of Puerto Rico at the instance of Castro to determine whether title to the Office of Secretary was in petitioner or Castro (R. 8). It was alleged that petitioner's appointment was void because Castro was filling the office at the time of petitioner's appointment, and because Section 30 of the Organic Act (prohibiting the appointment of a senator "to any civil office under the Government of Puerto Rico") rendered petitioner ineligible to hold the office in question (R. 8–9).

After a trial, the district court held that an Insular Senator may be appointed Secretary of the Capital, his acceptance thereof constituting a resignation of his seat in the Senate (R. 13–20), but that

[1] The term of an Insular Senator is four years. (Organic Act, Sec. 30; 48 U. S. C. § 819).

petitioner's appointment was invalid because there was then no vacancy and that Castro had not abandoned his office to petitioner (R. 26–27). The court declared Castro entitled to the office, and entered a judgment of ouster against petitioner (R. 45, 46).

The Supreme Court of Puerto Rico held, on appeal that neither petitioner nor Castro had a right to the office (R. 57–58). That court ruled that after November 1940, Castro held office at the will of the new City Manager and until a successor was designated (R. 51–52;[2] that Castro had voluntarly surrendered the office to his successor (R. 52–53); but that Castro had standing to maintain the *quo warranto* proceeding because he "does not ask to be put in possession of the office" and because the Attorney General authorized the proceeding "due to the public interest involved" (R. 57). As for petitioner, the court held that Section 30 of the Organic Act prevented him, as a Senator in the Insular legislature, from being legally appointed Secretary of the Capital, because that was an office "under the Government of Puerto Rico" (R. 56, 57). The Supreme Court held, therefore, that

[2] The Supreme Court of Puerto Rico had shortly theretofore held that the official term of office of City Manager is four years. *De Castro* v. *Board of Commissioners*, 59 P. R. R. 673, affirmed 136 F. (2d) 419 (C. C. A. 1), affirmed 322 U. S. 451. The City Manager appoints the Secretary of the Capital "for the term for which [the appointing officer] is appointed" (Act No. 99, Laws of Puerto Rico, 1931, Sec. 39), and a new City Manager was elected in November 1940 (R. 51).

petitioner's occupancy of the office since April 21, 1941, was unlawful, and that he should be required to vacate it. The declaration that Castro was entitled to the office, which had been included in the judgment of the district court, was omitted from that of the Supreme Court (R. 58). Petitioner appealed to the Circuit Court of Appeals for the First Circuit, which affirmed the judgment of the Supreme Court (R. 84).[3]

ARGUMENT

Section 30 of the Organic Act provides, in part, that "no senator or representative * * * shall, during his term of office, be appointed to any civil office under the Government of Puerto Rico." Both the Supreme Court of Puerto Rico and the court below construed this provision to prohibit the appointment of an Insular Senator to the office of Secretary of the Capital of Puerto Rico. We believe that the decision below is correct, and that further review is not warranted

1. Petitioner contends that the purpose of Section 30 was "to prevent the exercise of conflicting

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[3] Castro did not seek possession of the office in the Supreme Court of Puerto Rico (R. 57) and did not appeal from the ruling that he was not entitled to the office (R. 75–76, 81). Castro's right to office is therefore no longer an issue in the case. The People of Puerto Rico filed a brief and presented oral argument before the court below, in support of the conclusion of the Supreme Court as to petitioner's ineligibility for the office (R. 81).

powers between any of the departments of the government (executive, legislative and judicial" (Pet. 14–15), and argues therefrom that since the duties of local municipal officers, such as the Secretary of the Capital of San Juan, do not conflict with those exercised by an Insular legislator, such officers do not hold "civil office under the Government of Puerto Rico" within the meaning of Section 30 (Pet. 12–15). Both the premise and the conclusion are unsound.

The legislative history of the disqualification clause in Section 30 shows that its essential purpose was to prevent the prospect of appointment to a compensated government office from interfering with a legislator's impartiality and single-minded concentration upon lawmaking. On December 10, 1915, the House of Delegates of Puerto Rico presented a resolution to the President and Congress of the United States requesting the establishment of an autonomous and democratic government in that Island. In that resolution they declared (subsec. j) the "incompatibility of legislative duties with encumbrance of any other remunerative office or other office wherein jurisdiction is exercised," and urged that "members of both Houses * * * be prohibited from accepting any remunerative office during the term for which they may have been elected."[4] There-

[4] Hearings before Senate Committee on Pacific Islands and Puerto Rico, S. 217 (64th Cong., 1st Sess.), pp. 152, 153.

after, bills were introduced which subsequently became the Organic Act of Puerto Rico (Act of March 2, 1917, c. 145, 39 Stat. 951). The disqualification clause in Section 30 was explained as follows by the Senate Committee on Pacific Islands and Puerto Rico (S. Rep. No. 579, 64th Cong., 1st Sess., p. 3):

> The above provision, recommended by this committee as an amendment to the bill, is designed to remove from the thoughts of the legislators any expectation of reward or personal advantage in the enactment of legislation. A similar provision is found in most of our State constitutions and it has a wholesome effect.

The desirability of a prohibition against office-holding by legislators has also been recognized by many States, whose constitutions contain similar provisions. See *State* v. *Grover,* 102 Utah 41, 48–49, 125 P. (2d) 807, 810. The rationale of such provisions is that "a legislator who is holding a position on the state pay roll is too apt to allow the wishes of the one responsible for his appointment to decide the manner in which his vote shall be cast. A man in such a position is, to say the least, not in that independent frame of mind which should be possessed by the ideal legislator." *Chenoweth* v. *Chambers,* 33 Cal. App. 104, 106, 164 P. 428, 429; see also *Fyfe* v. *Mosher,* 149 Mich. 349, 350–351, 112 N. W. 725, 726; *Palmer* v. *State,* 11 S. D. 78, 80–81, 75 N. W. 818, 819; *State* v. *Grover,* 102

Utah 41, 125 P. (2d) 807, 811; *Satterwhite* v. *Garrison*, 34 Cal. App. 734, 736, 737, 168 P. 1053, 1054.[5]

These considerations are fully as cogent where the legislator is appointed to a municipal post in Puerto Rico as to a post in the central Insular Government. An Insular Senator receives compensation of only $7 for each day in session (Org. Act § 31; 48 U. S. C. § 820), while the Secretary of the Capital receives a yearly salary of $4,500 for four years (see Act No. 99, Laws of Puerto Rico, 1931, p. 648, § 37). To leave legislators eligible for the more lucrative post would defeat the purpose of Section 30 of the Organic Act "to remove from the thoughts of the legislators any expectation of reward or personal advantage" (S. Rep. No. 579, *supra*). As the court below observed (R. 83):

> Should a member of the Legislature receive or accept an appointment to a municipal post, there is the danger that he might lose that independence and impartiality of

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[5] The state authorities are divided as to whether a municipal office is an office "under the state government" within the meaning of similar provisions of the state constitutions. See cases collected in L. R. A. 1917 A, pp. 232–250, and Pet. pp. 17–24. It is submitted, however, as the court below observed, that the cases containing the "better reasoning" (R. 82), and those cited and followed most often by the state courts, support the view of the Supreme Court of Puerto Rico. See, *e. g. State* v. *Barham*, 173 La. 488, 137 So. 862; *Attorney General* v. *Common Council*, 112 Mich. 145, 70 N. W. 450; *State ex rel. Anderson* v. *Erickson*, 180 Minn. 246, 230 N. W. 637; *Shelby* v. *Alcorn*, 36 Miss. 273; *State ex rel. Kierskey* v. *Kelly*, 80 Miss. 803, 31 So. 901; *Satterwhite* v. *Garrison*, 34 Cal. App. 734, 168 P. 1053.

> thought and consideration desirable for him to possess. Where a measure involving the municipality is before the Legislature for consideration, the fact that a member thereof holds a municipal office might subject him to influences destructive of his independence of action.[6]

2. The Supreme Court of Puerto Rico, in construing Section 30, found that "municipal governments, due to the relations existing between them and the Insular Government and due to the supervision that the latter exercises over the former, are integral parts of the Government of Puerto Rico, and therefore the civil offices in the municipalities are civil offices under the Government of Puerto Rico" (R. 56). This construction of Section 30, which was also adopted by the court below (R. 81–82), is reasonable. Under the structure of Government created by the Organic Act and the decisions of the Insular courts, the "Government of Puerto Rico" consists of the various municipal governments as well as the central Insular Government. The present civil government of Puerto Rico, created by the Organic Act of March 2, 1917 (48 U. S. C. § 731 *et seq.*), consists of central or Insular Government, which has authority and jurisdiction over the

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[6] It is significant to note the trial court's finding that "the reasons for [petitioner's] appointment as secretary of the capital were of a political nature, that is, in order to fulfill political promises" (R. 26).

Island generally, and several Municipal Governments whose jurisdiction is limited to the territorial limits of the particular subdivision (Org. Act § 37; 48 U. S. C. § 821). The municipalities are subject to the plenary control of the Insular legislature, which may "create, consolidate, and reorganize [them] so far as may be necessary"; may "provide and repeal laws and ordinances therefor" (Org. Act § 37; 48 U. S. C. § 821); may "abolish any municipality and the officers provided therefor" (Org. Act § 29; 48 U. S. C. § 815); and may provide the manner in which the salaries of municipal officers may "be paid out of the municipal revenues" (Org. Act § 51; 48 U. S. C. § 799). According to the Supreme Court of Puerto Rico, the municipal corporation in Puerto Rico is "a part of the governmental machinery of the Island" (*San Millan* v. *Pension Board*, 45 P. R. R. 236, 237), and the relationship "between the municipalities and the territory is the same as that existent in the various states of the Union between their municipalities and the state." *Municipality of Manati* v. *Morales, Commn'r of Health*, 50 P. R. R. 789, 793. Similarly, the states have uniformly recognized that municipal corporations are local agencies of state government and constitute an integral part of the machinery of government. *United States* v. *Railroad Co.*, 17 Wall. 322, 329; *Barnes* v. *District of Columbia*, 91 U. S. 540, 544–545; *Klein* v. *New Orleans*, 99

U. S. 149, 150; *Worcester* v. *Street Railway Co.*, 196 U. S. 539, 548.[7]

There is special reason for holding the disqualification provision of Section 30 applicable to the office of Secretary of the Capital of Puerto Rico. The position occupied by the Capital of Puerto Rico and its officers in the Insular Government is not of a strictly local or municipal character, but is of general importance to the Insular Government.[8] As capital of Puerto Rico, its position is

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[7] Petitioner cites Section 3 of the Organic Act and argues that it indicates that the "Government of Puerto Rico" and "municipalities" of Puerto Rico are separate entities (Pet. pp. 24–25). However, an examination of Section 3 (48 U. S. C. §§ 741–741a, 745) reveals that it was necessary for Congress there to distinguish specifically between municipalities and the central government of Puerto Rico, since that section, *inter alia*, limits the authority of municipalities to issue bonds and the amount of public indebtedness which municipalities, as such, may incur. The Organic Act reveals no definite pattern as regards distinguishing municipal governments from the government of Puerto Rico. For instance, Section 20 of the Organic Act (48 U. S. C. §§ 786, 787, 790) first speaks of "revenues and receipts * * * of the government of Puerto Rico and of the municipal funds derived from bond issues" (§ 786), then speaks of the duties of the auditor with respect to "the government or any of its branches" (§ 787), and finally refers to "various departments and bureaus of the government and of the various municipalities" (§ 790). In one instance the phrase "fiscal concern of the government" is used to include municipal funds (§ 790).

[8] The office of the Secretary of the Capital was specifically created by the Insular Legislature of Puerto Rico (Act 99, Laws of Puerto Rico, 1931, Sec. 10). He is required to be

analogous to that of the District of Columbia, which this Court has characterized as "a selected area set apart for the enduring purposes of the general government, to which the administration of purely local affairs is obviously subordinate and incidental." *O'Donoghue* v. *United States,* 289 U. S. 516, 539; see *Federalist Papers,* No. XLIII. The office of Secretary of the Capital was thus properly held to fall within Section 30.[9]

"a person of experience in the functions of a municipal secretary," and his salary is fixed at $4,500 per year (*id.*, Sec. 37). The Secretary is required to call special meetings of the Board of Commissioners "when so directed by the Governor of Puerto Rico" (*id.*, Sec. 11); to keep the minutes of the Board of Commissioners (*id.*, Secs. 12, 37); to keep the general archives and civil registry of the capital; and to certify all ordinances and resolutions adopted by the Board (*id.*, Sec. 37).

[9] Since the Insular Legislature has plenary power and control of the municipalities of Puerto Rico, it is also arguable that even if the "Government of Puerto Rico" is construed to mean the central government only, exclusive of the municipal governments, a municipal office is nevertheless "under" the Government of Puerto Rico since it is subordinate and subject to that Government. Such a reading of the disqualification clause of Section 30 of the Organic Act is supported by the accepted meaning of the term "under" as "beneath" or "subject to" (Webster International Dictionary 1916 Ed.), and is also supported by a number of state decisions which hold that a municipal position is "under the state government" because subject to its dominant powers. See *Satterwhite* v. *Garrison*, 34 Cal. App. 734, 168 P. 1053; *Orndorff* v. *State*, 108 S. W. (2d) 206, 209–211 and cases cited therein.

CONCLUSION

It is respectfully submitted that the petition for a writ of certiorari should be denied.

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DECEMBER 1944.

APPENDIX

Section 30 of the Organic Act of Puerto Rico (Act of March 2, 1917, c. 145, § 30, 39 Stat. 959) as amended by the Act of June 1, 1938 (c. 308, 52 Stat. 595; 48 U. S. C. § 819) provides:

> The terms of office of senators and representatives elected at any general election shall be for four years, commencing on the 2d day of January following the date upon which such election was held. In case of a vacancy in the office of any senator or representative occuring by reason of death, resignation, or otherwise, the Governor, upon the recommendation of the central committee of the political party of which such senator or representative was a member, shall appoint a senator or representative from such political party to fill such vacancy who shall hold office for the remainder of the term for which his predecessor was elected. No senator or representative so elected or appointed shall, during his term of office, be appointed to any civil office under the Government of Puerto Rico, and no such senator or representative shall be eligible for appointment to any office created during his term of office until the expiration of two years after the date upon which his term of office shall have expired.

U. S. GOVERNMENT PRINTING OFFICE: 1944

Encl